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DEC 14 1963
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 673

PAN-AMERICAN LIFE INSURANCE COMPANY,
Petitioner,

vs.

AUGUSTIN GOYTISOLO RECIO,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

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PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Petitioner prays that a writ of certiorari issue to review the judgment below of the District Court of Appeal of Florida, Third District. This judgment affirms a summary final decree for respondent and holds that certain laws of the Republic of Cuba are not binding on Cuban citizens.

NOTE. Unless otherwise indicated, all emphasis supplied.

OPINIONS BELOW

The opinion of the Third District Court of Appeal is reported at 154 So.2d 197, and is attached hereto as Appendix A.

The memorandum decision of the Florida Supreme Court quashing certiorari is reported at 156 So.2d 857, and is attached hereto as Appendix B.

JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3). The Third District Court of Appeal's decision was filed on May 7, 1963 (R. 23), with the petition for rehearing denied on June 26, 1963 (R. 33). The decision did not become final until September 30, 1963, when the Florida Supreme Court quashed the certiorari petition and declined jurisdiction of the cause (R. 46). Cf., *American Railway Express Co.* v. *Levee*, 263 U.S. 19; Constitution of the State of Florida, Article V, Section 4(2).

QUESTION PRESENTED

Prior to 1960, petitioner, an American life insurance company doing business in Cuba, issued a life insurance policy to respondent, a Cuban citizen living in Cuba. In 1960, the recognized government of the Republic of Cuba enacted certain laws which expropriated petitioner's Cuban assets and substituted the Cuban State as the obligor on petitioner's insurance policies issued to Cuban citizens. Thereafter, respondent sued petitioner in the Florida courts contending that petitioner was still the obligor on the policy it had issued to him. Under these circumstances,

did the Florida courts err in refusing to recognize and apply these Cuban laws even though respondent was and is a Cuban citizen and petitioner's reserves on respondent's policy were, in fact, expropriated by the Cuban State?

CUBAN LAWS INVOLVED

On July 6, 1960, the Republic of Cuba promulgated Law No. 851 (R. 12). Pursuant to this Law, Resolution No. 3 was promulgated on or about October 24, 1960 (R. 12). This Resolution provides in pertinent part:

> "WHEREAS, the Imperialist interests whose representatives control the Government of the United States of North America, in their intention to utilize every means which they consider effective to impede the consolidation of the Cuban Revolution, have continued committing aggressions, every day more unscrupulous and criminal, against the economy of the nation.
>
> 'WHEREAS: Among the multiple measures adopted by the Government of the United States of North America, there stands out for its exceptional aggressiveness that of the general embargo on exportations from that country to Cuba with the intention of strangling our economy.
>
> 'WHEREAS: That measure in addition to violating the most elemental standards of international existence, constitutes an act of political coercion with which it pr[illegible]nds uselessly to weaken the popular force of the Cuban Revolution by creating difficulties for national supplies.
>
> 'WHEREAS: It is evident that this conduct of the Government of the United States of North America reveals the desperation and impotence of imperialism conducted by that Government; each day with more virulence, to employ the most unjust aggressions against our country.

'WHEREAS: It is the duty of the Revolutionary Government to defend the economy of the country.

'WHEREAS: Moreover, it is fundamental for the liberation and economic development of our country that the North American commercial and industrial firms be liquidated which presently constitute the remainder in our country of the financial capital of that country.

'THEREFORE: In use of the powers with which we are vested, in accordance with the provisions of No. 81 of June (sic July), 1960.

'RESOLVED

'FIRST: There is declared the nationalization by means of forced expropriation, and, consequently, there are adjudged in favor of the Cuban State in full dominium all the properties and firms located in the National Territory and the rights and actions resulting from the exploitation of these properties and concerns which are the property of natural and juridical persons, nationals of the United States of America or operators of firms in which nationals of that country have a predominant interest, as follows:

* * * *

'Group XX—Insurance Companies

'Pan-American Life Insurance Co.

* * * *

'SECOND: Therefore, the Cuban state is declared subrogated in place and grade of the natural and juridical persons referred to in the preceding section with respect to the properties, rights and rights of action mentioned, as well as the assets and liabilities constituting the capital of the concerns referred to.

'THIRD: It is declared that these forced expropriations are effected for reasons of necessity and public use and national interest mentioned in the Whereas clauses of this Resolution.'." (R. 17-19).

STATEMENT OF THE CASE

The facts are stated as follows in the Third District Court of Appeals decision below:

> "The defendant-insurance company appeals a summary final decree for plaintiff-policyholder in an action for declaratory decree. The complaint sought a declaration that the policy-holder was entitled to the cash-surrender value of the insurance policy. We affirm.
>
> The complaint of the policyholder made a copy of the insurance policy an exhibit. It appears without conflict that the defendant, Pan-American Life Insurance Company, is a corporation under the laws of the State of Louisiana, having its principal office in New Orleans, Louisiana. The policy provides for payment thereunder in United States dollars in New Orleans, Louisiana. The defendant-insurance company answered alleging that the acts of the Cuban Government in seizing its assets located in Cuba excused it from further performance under the contract of insurance sued upon. The court granted a summary decree for the plaintiff. . . ."
>
> * * * *
>
> "This Court has recently had occasion to make exhaustive inquiry into problems similar to those presented in this appeal. See Confederation Life Ass'n v. Ugalde, Fla. App. 1963, 151 So.2d 315. Under the law set forth in that opinion, the fact that the contract involved in the instant appeal is to be paid in the United States is determinative of the issue of whether the law of this country governs the method of performance.
>
> The additional factor which is present in this case is the contention of the insurance company that the acts of the Cuban Government in seizing the Com-

pany's assets located in Cuba excused the Company from further performance under the contract sued upon. In its answer the defendant-appellant pleaded as one of its defenses that in July of 1960, the Republic of Cuba enacted Law No. 851 which authorized the issuance of resolutions of expropriation, and pursuant thereto, on October 24, 1960, Resolution No. 3 was promulgated, expropriating the Cuban assets of the Pan American Life Insurance Company and substituting the Cuban state as the obligor on existing policies.

After the filing of the answer, the plaintiff moved for a summary final decree. In opposition to the motion, the defendant submitted two affidavits, one of Dr. Fernando C. Mendigutia, a Cuban lawyer now resident in Miami, the other of Mr. J. V. Bird, formerly the general manager and agent for Pan American Life Insurance Company in Cuba. In that portion of Dr. Mendigutia's affidavit which is relevant to the defense now discussed, he sets forth his opinion that Law No. 851 of July, 1960, authorized the issuance of decrees of expropriation and nationalization, and that pursuant thereto on October 24, 1960, Resolution No. 3 was signed which expropriated the Cuban assets of Pan American, substituting the Cuban state as the obligor on the Company's Cuban policies including the policy in this suit. Mr. Bird's affidavit sets forth that on October 26, 1960, he delivered all of Pan American's assets to the Cuban administrator appointed under the expropriation resolution. . . ." 154 So.2d at 198-199.

In holding that neither Cuban law nor the act of state doctrine applied, the Third District Court of Appeal reasoned, in part, as follows:

"Appellant argues that expropriation decrees of recognized foreign sovereigns insofar as they affect the rights of nationals of that sovereign have been given effect in the courts of this country. In support of this proposition, it cites many cases holding that

under the act of state doctrine the courts of the United States will not recognize a right of action based upon the claimed invalidity of an act of the government of a foreign state affecting its own nationals in its own territory. It is not necessary for us to discuss and analyze the recent developments of the act of state doctrine as this doctrine has been applied to the decrees of the present government of Cuba. This task has been undertaken elsewhere. See Banco Nacional de Cuba v. Sabbatino, 307 F.2d 845 (2d Cir. 1962); Rodriguez v. Pan American Life Ins. Co., 311 F.2d 429 (5th Cir. 1962).

We do not find that the act of state doctrine is applicable to the situation here before us. The appellant, an American insurance company, did business not only in the Republic of Cuba, but in the United States. As previously mentioned, the policy here involved was payable in the United States. Its contact with the law of Cuba was that it was sold there to a Cuban citizen. A fair reading of the policy makes it apparent that an important provision was that the policyholder might travel to the United States and that the policy would be paid in the United States. It must therefore be concluded that the purpose of this provision was to obligate the American company to pay in America without regard to the vicissitudes of Cuba law. . . ."

* * *

". . . *As we have previously set forth, it is our holding that the law of the place of payment, or United States law, applies to this contract. Therefore, the expropriation decrees are not a bar to the action upon the policy.*" 154 So.2d at 199.

The court below does not elucidate on whether the "United States law" which applies is "federal common law" or the law of some state of the United States, or some other law. The only thing that can be stated with certainty is that it was held that Cuban law does not apply and "United States law" does.

As shown by the above quoted excerpts from the opinion below, the question here presented was both timely raised and actually decided by the Florida courts.

REASONS FOR GRANTING THE WRIT

Petitioner urges the Court to grant this petition for a writ of certiorari to the District Court of Appeal of Florida, Third District, for the following reasons:

1. This case is equally as important in the field of international relations as the *Sabbatino* case, in which this court has already granted certiorari. This case represents the other side of the coin under examination in *Sabbatino*. That case involves the effect of Cuban expropriation on a Cuban corporation alleged to be controlled by United States stockholders. This case involves the effect of Cuban expropriation of American companies and their outstanding liabilities to Cuban nationals suing in the United States.

Pan-American Life alone had outstanding more than 6,000 policies issued through its Havana branch. It is impossible to know how many of these policyholders or beneficiaries are among the hundreds of thousands of Cubans now resident in the United States. It is known that there are many of these policies presently in litigation, and more to come. There are about twenty such suits pending in the state and federal courts in Miami alone. Others have been filed in Jacksonville, New Orleans, Galveston, Shreveport, Raleigh, Newark, and San Juan, Puerto Rico.

One lawyer in Miami says he has two hundred more ready to be filed and one other American company is informed that several hundred more are available for filing in the New York City area alone. One Cuban lawyer is known to have run advertisements in Spanish-language

papers in San Juan and Miami offering his services in collection of policy benefits.

The pending suits involve all kinds of policy claims—death benefits, cash surrender values, annuities, endowments, as well as declarations that the companies must accept premiums to keep policies in force and pay benefits upon future demand. Some cases are in state courts, others in the federal courts.

2. There is a direct conflict in the lower court decisions which only this court has the power to resolve. Two appellate opinions have already been rendered by state appellate courts, diametrically opposed to each other. One is this case in Florida. The other is a decision of the Court of Appeal of Louisiana, in the case of *Theye Y Ajuria* v. *Pan American Life Insurance Co.*, (La. App. 1963), 154 So.2d 450. Even within the same court, there is confusion and difference. Thus, in this case one panel of judges held that Resolution No. 3 did not call for the application of the Act of State doctrine, while only one week later, another panel held that Resolution No. 3, applied to a Cuban corporation controlled by Americans, did require the application of the doctrine. See *National Institute of Agrarian Reform* v. *Kane*, (Fla. App. 1963), 153 So.2d 40.

The decision of these federal questions should be uniform throughout the country and free from the vagaries of decisions by courts of differing judicial systems. The only way such uniformity can be achieved is by a decision of this court. If it is adverse to the companies, they will undoubtedly pay their debts. If it is favorable to the companies, the decision of this court will put an end to the impending flood of litigation. In either event, there will be an enormous saving of money, legal manpower and judicial labor.

3. The decision in this case is in conflict with numerous decisions of this Court applying the Act of State doctrine to the acts of recognized foreign sovereigns. *E. g., Oetjen* v. *Central Leather Co.*, 246 U.S. 297; *Underhill* v. *Hernandez*, 168 U.S. 250; *American Banana Co.* v. *United Fruit Co.*, 213 U.S. 347; *Shapleigh* v. *Mier*, 299 U.S. 468; *U. S.* v. *Belmont*, 301 U.S. 324; *U. S.* v. *Pink*, 315 U.S. 203.

4. *Pan-American Life Insurance Company* has pending in this court a petition for certiorari to the United States Court of Appeal for the Fifth Circuit in two cases under this Court's No. 792, October Term, 1962. These cases differ slightly in that the expropriation decree in No. 792 was Law No. 151, enacted on March 17, 1959, which set up the "black list" of proscribed supporters of Batista. The cases under No. 792 were begun in the summer of 1960, several months before the issuance of Resolution No. 3. A disposition by this Court of No. 792 will, therefore, not settle one of the most important questions involved in this case. *Pan-American Life*, therefore, urges the Court to grant both petitions, so that full consideration may be given to the various Castro decrees and their effect upon the reciprocal rights and duties between Cuban nationals and American business concerns.

5. *Pan-American Life Insurance Company* also has pending in this court, petitions for certiorari in the case of *Pan-American Life Insurance Company* v. *Marie Lorido*, No. 379-380, October Term, 1962. The instant case differs from *Lorido* only in that the policy in this case is payable in United States dollars and premiums have been paid in that currency. Grant of certiorari here would enable this Court to settle still another facet of the international problems created by Cuban expropriations.

CONCLUSION

It is respectfully submitted that this petition for a writ of certiorari be granted.

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APPENDIX A

PAN-AMERICAN LIFE INSURANCE COMPANY,
Appellant,

v.

AGUSTIN GOYTISOLO RECIO,
Appellee.

No. 62-452

District Court of Appeal of Florida,
Third District.

May 7, 1963

Rehearing Denied June 26, 1963

PEARSON, TILLMAN, Chief Judge.

The defendant-insurance company appeals a summary final decree for plaintiff-policyholder in an action for declaratory decree. The complaint sought a declaration that the policyholder was entitled to the cash-surrender value of the insurance policy. We affirm.

The complaint of the policyholder made a copy of the insurance policy an exhibit. It appears without conflict that the defendant, Pan-American Life Insurance Company, is a corporation under the laws of the State of Louisiana, having its principal office in New Orleans, Louisiana. The policy provides for payment thereunder in United States dollars in New Orleans, Louisiana. The

defendant-insurance company answered alleging that the acts of the Cuban Government in seizing its assets located in Cuba excused it from further performance under the contract of insurance sued upon. The court granted a summary decree for the plaintiff.

[1] It is the general rule that unless a contrary intention is expressed in the contract, matters connected with the performance are regulated by the law prevailing at the place of performance. Scudder v. Union National Bank of Chicago, 91 U.S. 406, 23 L.Ed. 245 (1875); Brown v. Ford Motor Co., 48 F.2d 732 (10th Cir. 1931); Repsold v. New York Life Ins. Co., 216 F.2d 479 (7th Cir. 1954); see also Restatement, Conflict of Laws, §358 (1934).

[2] Clearly then, a contract of a United States corporation payable in the United States in United States dollars cannot be governed by Cuban laws as to the method of performance.

This Court has recently had occasion to make exhaustive inquiry into problems similar to those presented in this appeal. See Confederation Life Ass'n v. Ugalde, Fla.App. 1963, 151 So.2d 315. Under the law set forth in that opinion, the fact that the contract involved in the instant appeal is to be paid in the United States is determinative of the issue of whether the law of this country governs the method of performance.

The additional factor which is present in this case is the contention of the insurance company that the acts of the Cuban Government in seizing the Company's assets located in Cuba excused the Company from further performance under the contract sued upon. In its answer the defendant-appellant pleaded as one of its defenses that in July of 1960, the Republic of Cuba enacted Law No. 851 which authorized the issuance of resolutions of ex-

propriation, and pursuant thereto, on October 24, 1960, Resolution No. 3 was promulgated, expropriating the Cuban assets of the Pan American Life Insurance Company and substituting the Cuban state as the obligor on existing policies.

After the filing of the answer, the plaintiff moved for a summary final decree. In opposition to the motion the defendant submitted two affidavits, one of Dr. Fernando C. Mendigutia, a Cuban lawyer now resident in Miami, the other of Mr. J. V. Bird, formerly the general manager and agent for Pan American Life Insurance Company in Cuba. In that portion of Dr. Mendigutia's affidavit which is relevant to the defense now discussed, he sets forth his opinion that Law No. 851 of July, 1960, authorized the issuance of decrees of expropriation and nationalization, and that pursuant thereto on October 24, 1960, Resolution No. 3 was signed which expropriated the Cuban assets of Pan American, substituting the Cuban state as the obligor on the Company's Cuban policies including the policy in this suit. Mr. Bird's affidavit sets forth that on October 26, 1960, he delivered all of Pan American's assets to the Cuban administrator appointed under the expropriation resolution.

Appellant argues that expropriation decrees of recognized foreign sovereigns, insofar as they affect the rights of nationals of that sovereign, have been given effect in the courts of this country. In support of this proposition, it cites many cases holding that under the act of state doctrine the courts of the United States will not recognize a right of action based upon the claimed invalidity of an act of the government of a foreign state affecting its own nationals in its own territory. It is not necessary for us to discuss and analyze the recent developments of the act of state doctrine as this doctrine has been applied to the

decrees of the present government of Cuba. This task has been undertaken elsewhere. See Banco Nacional de Cuba v. Sabbatino, 307 F.2d 845 (2d Cir. 1962); Rodriguez v. Pan American Life Ins. Co., 311 F.2d 429 (5th Cir. 1962).

[3] We do not find that the act of state doctrine is applicable to the situation here before us. The appellant, an American insurance company, did business not only in the Republic of Cuba, but in the United States. As previously mentioned, the policy here involved was payable in the United States. Its contact with the law of Cuba was that it was sold there to a Cuban citizen. A fair reading of the policy makes it apparent that an important provision was that the policyholder might travel to the United States and that the policy would be paid in the United States. It must therefore be concluded that the purpose of this provision was to obligate the American company to pay in America without regard to the vicissitudes of Cuban law.

The appellant, insurance company, now asks that the courts enforce the expropriation decrees entered by the present government of Cuba. It asks the enforcement of the decrees by means of an affirmative defense; that is, the denial of the policyholder's recovery because of the existence of the decrees. As authority for its defense, the appellant relies most heavily upon the case of Dougherty v. Equitable Life Assur. Soc'y of United States, 266 N.Y. 71, 193 N.E. 897 (1934). It there appeared that Equitable Life and a number of other American life insurance companies had qualified to do business in Russia. They issued policies in Russia to Russian nationals. The Russian branches of the American companies were expropriated by the Soviet Government, which substituted a system of state support of its nationals and abolished the institution of insurance. After recognition of Soviet Russia by the United

States, test cases were filed in New York against the companies for various benefits under the policies. The plaintiffs were successful in the lower courts but in the highest appellate court, they failed. As we gather the basis for the holding, it is that inasmuch as the contracts involved were Russian contracts payable in Russia, in Russian funds, and exclusively from Russian assets, the liability would be governed by Russian law. We do not think that this reasoning is applicable to the present case where the total assets of the appellant are pledged to the payment of the contract, and the contract is payable in the United States. As we have previously set forth, it is our holding that the law of the place of payment, or United States law, applies to this contract. Therefore, the expropriation decrees are not a bar to the action upon the policy.

Affirmed.

APPENDIX B

IN THE
SUPREME COURT OF FLORIDA

JULY TERM, A. D. 1963

MONDAY, SEPTEMBER 30, 1963

Case No. 32,848

PAN-AMERICAN LIFE INSURANCE COMPANY,
Petitioner,

vs.

AGUSTIN GOYTISOLO-RECIO,
Respondent.

The respondent in the above entitled cause has filed a motion to quash the Petition for Writ of Certiorari filed in this cause July 11, 1963, and upon consideration thereof, it is ordered that said motion be and the same is hereby granted, and said Petition for Writ of Certiorari is quashed.

A True Copy
TEST

GUYTE P. McCORD
Clerk Supreme Court

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IN THE

Supreme Court of the United States

October Term, 1963

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PAN-AMERICAN LIFE INSURANCE COMPANY,

Petitioner,

v.

AUGUSTIN GOYTISOLO RECIO,

Respondent.

Petition for a Writ of Certiorari To the District Court of Appeal of Florida, Third District

---

PETITION FOR REHEARING

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IN THE

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October Term, 1963

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AUGUSTIN GOYTISOLO RECIO,

Respondent.

Petition for a Writ of Certiorari To the District Court of Appeal of Florida, Third District

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PETITION FOR REHEARING

Petitioner, Pan-American Life Insurance Company, presents this, its petition for rehearing, and respectfully shows the Court the following:

I.

This petition for rehearing is directed to the Court's order of June 22, 1964, denying certiorari in the above captioned case. The petition is presented pursuant to Supreme Court Rule 58(2) and is accompanied by a certificate of good faith as required by said Rule.

II.

The intervening circumstances of substantial or controlling effect relied on for reconsideration of the Court's order denying certiorari are as follows:

1. At the present time, a large number of Cuban insurance cases are pending in various state and federal courts on both the trial and appellate levels. In addition, during this Court's summer recess, petitions for certiorari will be presented to the Court in several cases which have already been concluded in state appellate courts.

2. A conflict of decisions arising after initial denial of certiorari and before denial of a petition for rehearing is a recognized basis for granting a petition for rehearing in this Court. E.g., *Sanitary Refrigerator Co. v. Winters*, 280 U.S. 30.

3. At the present time, there are a number of Cuban insurance cases pending in the United States Court of Appeals for the Fifth Circuit. In two of these cases, this Court, on April 6, 1964, granted certiorari, vacated the Fifth Circuit's judgments, and remanded "for further consideration in light of Banco Nacional de Cuba v. Sabbatino". *Pan-American Life Insurance Co. v. Pedro Menendez Rodriguez*, 12 L.Ed.2d 82; *Aetna Insurance Co. v. Pedro Menendez*, 12 L.Ed.2d 82.

In the normal course of events, the Fifth Circuit's opinion on remand will be rendered before this Court reconvenes next fall. The issues in the Fifth Circuit cases

are such that its opinion will, in all probability, pass on the same issues raised by the instant cases. Moreover, the Court's action in remanding for reconsideration in the light of *Sabbatino* is a strong indication that the Fifth Circuit should and will take a different view from that taken by the Florida courts below.

Justice will not prevail if a conflict of decisions arises prompting this Court to grant certiorari in the Fifth Circuit cases after it has lost jurisdiction in the present case.

4. In addition to the *Rodriguez* cases, the Fifth Circuit also has four other Cuban insurance cases pending on appeal from the Southern District of Florida. Your petitioner, Pan-American Life Insurance Company, is appellant in three of these cases and American National Insurance Company, is appellant in the fourth. Appellants have filed their briefs in the cases and a Fifth Circuit opinion may be handed down before the instant petition is acted on by this Court.

5. The judicial decisions which have and are being rendered in this area are so numerous and varied in their approach that it is impossible to predict what the judicial climate will be when this Court again sits in the fall. The state of the law changes almost daily and will continue to do so until this Court lays the matter to rest. Accordingly, your petitioner respectfully suggests that justice will be best served by a reconsideration of these cases in the fall in the light of what transpires during the summer.

III.

For the foregoing reasons, it is respectfully submitted that this petition should be granted.

Respectfully submitted.

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and

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By _____

CERTIFICATE OF SERVICE

I, SAM DANIELS, of counsel for PAN-AMERICAN LIFE INSURANCE COMPANY, the petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that a copy of the foregoing Petition for Rehearing was served on CAREY, TERRY, DWYER, AUSTIN, COLE & STEPHENS, Attorneys for Respondent, by depositing same in a United States Mail Box with first class postage prepaid, addressed to them at their office address, 650 Seybold Building, Miami, Florida 33131, on this day of July, 1964. I further certify that two copies of the foregoing Petition for Rehearing were served on the HONORABLE ARCHIBALD COX, Solicitor General, by depositing same in a United States Mail Box with first class postage prepaid, addressed to him at his office address, Department of Justice, Washington, D. C., on this day of July, 1964.

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